IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7617 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHIKHABHAI S PETHANI

Versus

STATE OF GUJARAT

Appearance:

MR AM DIVETIA for Petitioners

MS.MANISHA L.SHAH, AGP. for Respondent No. 1, 3

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 05/05/2000

ORAL JUDGEMENT

#. By means of filing this petition under Article 226 of the Constitution of India the petitioners who are the members of Home Guards' Sub-unit at Chalala, have prayed to issue a writ of mandamus or any other appropriate writ or order directing the State of Gujarat to pay various allowances to the Rural Home Guards as are being paid to the Urban Home Guards with effect from January 1,1988. The petitioners have further prayed to quash and set aside the order dated February 18,1989 by

which the District Commandant, Home Guards, Amreli has directed the Officer in charge, Home Guards, Chalala to discontinue the holding of parade for Rural Home Guards. The petitioners have also prayed to direct the respondents to arrange the Home Guards Parade and grant the increased parade allowance from December 18,1984 to March 30,1988.

#. The petitioners are the members of the Home Guards. Though a distinction has been always maintained between Urban Home Guards and Rural Home Guards which is evident from Compendium of Instructions 1985 issued by the State Government, the petitioners claim that there is substantially no difference in the duties and responsibilities to be performed by Urban Home Guards or Rural Home Guards and the Home Guards of Urban area as well as Home Guards of Rural area stand on same footing for all purposes. The petitioners have averred in the petition that by circulars dated December 18,1984 and March 30,1988 the allowances payable to the Urban Home Guards have been increased but no such benefit has been accorded to the Rural Home Guards. The grievance made by the petitioners is that though the representations were made to the appropriate authorities for removing anomaly no action has been taken by the respondents to increase the allowance payable to Rural Home Guards. The petitioners have stated in the petition that substantial increase in parade allowance payable to Urban Home Guards without any corresponding increase in allowance payable to the Rural Home Guards is violative of Article 14 of the Constitution. According to the petitioners in order to defeat the just demand of the petitioners for increase in the parade allowance, the District Commandant, Amreli has directed Officer in charge, Home Guards, Chalala to discontinue Rural Home Guards parade which is totally illegal. What is asserted by the petitioners in the petition is that the duties and responsibilities of the Home Guards belonging to Rural areas are in no manner of inferior quality than those being performed by the Home Guards belonging to the urban areas and therefore there is no reason why the Rural Home Guards should not be paid allowance at the same rate as is being paid to Urban Home Guards. The petitioners have claimed that circular issued by respondent no.3 treating Women Home Guards stationed at Wadia as urban unit from August 1,1988 is discriminatory and bad in law. Under the circumstances, the petitioners have filed the present petition and claimed reliefs to which the reference is made earlier.

#. Though this matter is listed ten times for final hearing before the Court, the learned Counsel for the

petitioner has not remained present. I have heard Ms.Manisha L.Shah, learned Assistant Government Pleader and taken into consideration the documents forming part of the petition as well as compendium of instructions 1985 which incorporates all orders/instructions issued by the Government upto April,1985. Home Guards Organisation is basically voluntary in character. The recruitment to Urban Home Guards is broad based in comparison to recruitment of Rural Home Guards. The Home Guards are raised under the Bombay Home Guards Act of 1947. The general supervision and control of Home Guards throughout the State vests in the Commandant General who is appointed by the State Government. The administration of Home Guards in a district is vested in the Commandant appointed by the State. Subject to the approval of the Commandant General, the Commandant has power to appoint as member of the Home Guards such number of persons, who are fit and willing to serve. The members of the Home Guards have to discharge such functions and duties in relation to the protection of persons, the security of property, the public safety and maintenance of essential services as may be assigned to them. A member of Home Guards is liable to punishment if he neglects to perform duties assigned to him. No person can be appointed as a member of Home Guards unless he fulfills requirements stipulated in Rules of the Bombay Home Guards Rules, 1953. A member of the Home Guards has to undergo such course of training as may be determined by the Commandant General. The training to be imparted to the Home Guards is stipulated in Chapter 5 of the Compendium of Instructions, 1985. The training for urban and rural Home Guards is phased into four parts viz. Basic training, Refresher training, Advanced training and Leadership training. The Urban Home Guards are trained outside their normal working hours with the training extending over a fairly long period, generally at part-time parades. In the case of Rural Home Guards, the training is imparted in camps at District Training Centres during slack agricultural seasons. In certain thinly populated areas of the country specially in hilly regions, if necessary a few mobile training teams are also organised. The details of training to be imparted to Urban Home Guards are as under :

(a) Basic training

A programme of 170 periods of 45 minutes each is to be covered at parads of 1 1/2 to 2 1/2 hours duration.

(b) Refresher Training (Sedond Year)

One parade of 2 1/2 hrs. duration every week should be attended by every Urban Home Guard. The entire syllabus of basic Training should be gone over gradually with greater emphasis on P.T.Unarmed Combat, Drill, Weapon Training, Crowd Control and duties and responsibilities relating to law and order aspect.

(c) Advanced Training

One-third of the total strength is to be given advanced training of 80 periods through part-time parades. In Advanced Training emphasis should be laid on higher training in subjects such as Drill, Weapon Training, Crowd Control, Anti-riot duties Unarmed Combat, Traffic Control, arrangements for control of large public meetings, Protection of vital installations, Patrolling, Fire-fighting and Civil Defence-subject such as Rescue and First-Aid. If possible, handling of automatic weapones such as stenguns and light machine guns may also be taught.

(d) Leadership Training

There is no change in syllabus of Leadership Training which will continue to be for 21 days-for Section and Platoon Commanders and for 30 days in the case of Company Commanders. From the second year onwards. Section Leaders 'Platoon Leaders' Courses may be organised either at all the Rural Home Guards District Training Centres or at selected centres throughout the State. From the third year, the Company Commander's Courses should also be organised. Similar arrangements will also be necessary for securing a built-in leadership for the Urban Home Guards and their women's wing. Here the Leadership Courses may be run on part-time basis, except for Company Commanders, who should preferably go to the Central Institute for one month's intensive course."

The details of training to be imparted to Rural Home Guards are as under :

"5.3. RURAL HOME GUARDS

(a) Basic Training (First Year)

The period of Basic training for Rural Home Guards will be reduced to six weeks. It will consist of 276 periods of 45 minutes each.

(b) Refresher Training (2nd year)

Annual refresher training of 25 days of training will be given at DTCs in such a manner that the total of 25 days is broken into a suitable number of lesser days at any one time. During this training emphasis will be laid on subjects of PT :Unarmed Combat, Drill, Weapon Training, Crowd Control and duties and responsibilities relating to law and order aspect.

(c) Advanced Training

One platoon strength of 40 Home Guards in each CD Block will be given this training. The training will last for 25 days in DTCs for non-border States and 30 days for Border States. The emphasis on subjects in Advanced Training will be the same as for Urban Home Guards.

(d) Leadership Training

Duration of leadership training will be the same as for Urban Home Guards."

The above quoted data makes it manifest that type of training imprated to Urban Home Guards is qualitatively, superior and extensive in comparision to training to be imparted to Rural Home Guards. The functions and duties of members of the Home Guards ordinarily consist of (a) guarding public buildings (b) patrolling for the purpose of the prevention of crime and the enforcement of such regulations and orders under the Bombay Police Act, 1951 or any other law as it would be the duty of a Police Officer to enforce under the said law (c) assisting the ordinary police force in enforcing the provisions of the Bombay Prohibition Act, 1949 when appointed as Prohibition Officers and perform such other duties as may be assigned by State or the Commandant General by State or the Commandant General. Thus members of the Home Guards serve as an auxillary to police and generally help in maintaining security, essential

services etc.

#. When Home Guards are employed as auxiliary to the police, the Home Guards are required to be utilised on jobs like guard duty, traffic control, patrolling and the like, in the execution of which the prestige and dignity of the organisation is enhanced.Even for maintenance of essential services the Urban Home Guards can be utilised for which technical trained Home Guards are necessary. It hardly needs to be emphasised that problems like disruption of essential services, epidemic, fires, floods, security problems traffic problems etc. are acute in urban area in comparison to rural areas. Thus, it is wrong to contend that there is no difference or distinction in the training as well as duties and responsibilities to be performed and/or assigned to the Urban Home Guards and Rural Home Guards. It may be mentioned that as provided in Rule 17 of the Bombay Home Guards Rules,1953 Officers and other Members of the Home Guards are entitled to receive such allowances and at such rates as the State Government may from time to time determine. In view of the extensive training which is imparted to Urban Home Guards and having regard to the responsibilities and different kinds of works to be performed by the Urban Home Guards, the State Government has decided to increase the allowances including parade allowance payable to them. The payment of more allowance to the Urban Home Guards if tested on the touch stone of Article 14, cannot be regarded as arbitrary or having no rational basis. The decision taken by the District Commandant, Home Guards, Amreli to discontinue the Rural Home Guards parade cannot be regarded either as illegal or arbitrary because he has merely conveyed the decision taken by the Deputy Commandant General, Home Guards, Ahmedabad. The decision to discontinue the parade for Rural Home Guards at specified centres is a policy decision and the petitioners have failed to point out that the said policy decision is either arbitrary, irrational or not informed by any reasones so as to warrant interference of the Court in the present petition which is filed under Article 226 of the Constitution. Keeping in view the need for certain kinds of services which women can perform with greater aptitude than man such as welfare services, women are recruited as Home Guards. In the context of the present situation, such women Home Guards are required to assist women police in duties relating to law and order. Therefore, the decision to treat women Home Guards stationed at Wadia as Urban Home Guards cannot be regarded as arbitrary. On

overall view of the matter I am satisfied that the decision of the respondent viz. (i) to give Higher Allowance to Urban Home Guards in comparison to Rural Home Guards, (ii) to discontinue Home Guards Parade for Home Guards stationed at Chalala and other centres and (iii) to raise the status of Women Home Guards stationed at Wadia to that of Urban Home Guards are neither illegal nor bad in law and no case is made out by the petitioners to grant any of the reliefs claimed in the petition. The result is that the petition cannot be allowed and is liable to be dismissed.

#. For the foregoing reasons the petition fails and is dismissed. Rule is discharged with no order as to costs.

Sd/-
(J.M.Panchal, J)

m.m.bhatt